

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION**

**ERIC R. HEINZE**

**PLAINTIFF**

**v.**

**NO. 4:07CV146-P-B**

**MR. LAKES, ET AL.**

**DEFENDANTS**

**FINAL JUDGMENT**

Upon consideration of the file and records in this action, including the Report and Recommendation of the United States Magistrate Judge dated November 13, 2007, and the December 3, 2007, objections to the Report and Recommendation, the court finds that the plaintiff's objections are without merit and that the Magistrate Judge's Report and Recommendation should be approved and adopted as the opinion of the court.

The court shall, however, address one of the plaintiff's objections to the Report and Recommendation. The plaintiff argues that defendant Lakes (a prison security officer) was deliberately indifferent to the plaintiff's serious medical needs by requiring the plaintiff to wait until after recreation period was concluded before seeking medical assistance for the plaintiff's injured knee and ankle. The plaintiff makes a similar argument regarding defendant Walker (a prison transport officer). The plaintiff argues that defendant Walker's decision the following morning to require the plaintiff to walk, with assistance, to medical (and leaving the plaintiff to seek assistance from another inmate to travel within the medical unit to the waiting area) constituted deliberate indifference to the plaintiff's serious medical needs. These objections are simply without merit. The plaintiff does not allege that defendants Lakes and Walker were medical personnel authorized to diagnose or treat illnesses or injuries. Instead, Lakes and Walker were merely carrying out their duties as prison security guards. As such, their alleged failure to recognize the seriousness of the plaintiff's injury does not rise to the level of deliberate

indifference.

It is, therefore **ORDERED**:

1. That the Report and Recommendation of the United States Magistrate Judge dated November 13, 2007, is hereby **APPROVED AND ADOPTED** as the opinion of the court.

2. That the instant case is hereby **DISMISSED** with prejudice for failure to state a claim upon which relief could be granted, counting as a “strike” under 28 U.S.C. §§ 1915 (e)(2)(B)(i) and 1915(g).

3. That this case is **CLOSED**.

THIS, the 19<sup>th</sup> day of December, 2007.

/s/ W. Allen Pepper, Jr.  
W. ALLEN PEPPER, JR.  
UNITED STATES DISTRICT JUDGE